

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JAMES W NEAL JR  
Plaintiff,

Civil Action No. 7:10-CV-00163

v.

M. Stanford S. Roberts, medical department  
Defendant(s).

**VERIFIED STATEMENT**

I, the plaintiff in this action, have been advised of the requirements regarding exhaustion of administrative remedies as outlined in 42 U.S.C. 1997e and now submit this verified statement.

(Choose only one):

☒ I have exhausted my administrative remedies as to each of the claims raised in my complaint by appealing my claims to the highest available level of the administrative remedies procedures. Copies of the record of the proceedings are attached to this statement.

☐ I have attempted to exhaust my administrative remedies but my grievance was rejected as untimely. I have appealed that determination to the highest level available. I have attached documentation verifying my attempts to exhaust administrative remedies.

☐ There are no administrative remedies available to me at this time, either because the issue I raise is nongrievable, or because there is no grievance procedure at the correctional facility at which I am confined. I have attached documentation verifying my attempts to exhaust administrative remedies.

☐ This cause of action arose at \_\_\_\_\_, and I am now being housed at another facility, \_\_\_\_\_. Therefore, I do not believe I have administrative remedies available at this time.

I affirm that I am the plaintiff in this action and I know the content of the above statement; that it is true of my own knowledge, except as to those matters that are stated in it to be based on my own information and belief; and to those matters, I also believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

4-19-10  
DATE

James W. Neal Jr #1180270  
SIGNATURE OF AFFIANT



VIRGINIA DEPARTMENT OF CORRECTIONS  
Regular Grievance Form

Effective Date: July 1, 2005  
Operating Procedure# 866 Attachment #2

## REGULAR GRIEVANCE FORM

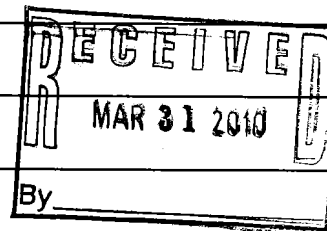
630-10-12g

Log Number 00003

|           |       |         |          |             |
|-----------|-------|---------|----------|-------------|
| NEAL      | JAMES | 1180278 | A1       | 144         |
| Last Name | First | Number  | Building | Cell Number |

WHAT IS YOUR COMPLAINT? (Provide information from the informal process: who did you see, when did you see them, what was done OR attach informal complaint if implementation Memorandum requires such).

on 3-16-10 I was refused my medication by the evening nurse. I asked officer Collins right then for an emergency grievance and he would not give me one. That date officer Collins was in A Bld because he was with the nurse. Lt Mullins stated I was in the pool socializing. I was in the shower when the nurse arrived. I had to get out of the shower and go to my cell to get my ID and water. By that time the nurse was leaving. Since the nurse has no set time for pill call when they come during roll call they should understand that people may be on the phone or in the shower. If medical had a set time in every pod for medication to be passed out for ex... 8am + 4pm then this would not happen. But they do not because the nurses arrive at all times. Any medication that is considered chronic care is life sustaining and ms Roberts has no way of knowing that if I missed on dose whether it was life threatening or not. She is just a nurse not a doctor or a specialist. Plus look at who signed the emergency grievance. If he was not working the Bld. how did Collins sign it. What action do you want taken? Her lack of professionalism by not keep the patient safe was not responsible.



Grievant's Signature: James Neal #1180278

Date: 3-1-10

Warden/Superintendent's Department  
Grievance Department

B Raviza

Date Received:

MAR 02 2010



VIRGINIA DEPARTMENT OF CORRECTIONS  
Regular Grievance Form

Effective Date: July 1, 2005  
Operating Procedure# 866 Attachment #2

**INSTRUCTIONS FOR FILING:** You are required per Division Operating Procedure 866 "Inmate Grievance Procedure" to attempt to resolve your complaint in good faith prior to filing a regular grievance. The institutional Implementation Memorandum 866 details the informal process to use. You must submit your grievance within 30 days from the date of occurrence or discovery of incident. Only one issue per grievance will be addressed. Write your issue only in the space provided on the grievance form, preferably in ink. Regular grievances are submitted through the institutional mail to the Warden/Superintendent's office and a receipt issued within 2 working days from received date if the grievance is not returned during intake.

**INTAKE:** Grievances should be accepted for logging unless returned for the following reason(s):

- Non-Grievable. This issue has been defined as non-grievable in accordance with Division Operating Procedure 866.
- ☐ Disciplinary Procedure. You may appeal hearing decisions, penalties, and/or procedural errors under the provisions in Division Operating Procedure 861, "Inmate Discipline".
  - ☐ Matters beyond the control of the Department of Corrections
  - ☐ Validation decisions rendered by the Security Threat Group Program Manager

Does not affect you personally

Limited. You have been limited by the Warden/Superintendent

More than one issue – resubmit with only one issue

Expired Filing Period. Grievances are to be filed within 30 calendar days from date of occurrence/incident, or discovery of the occurrence/incident except in instances: 1) beyond the inmate's control or, 2) where a more restrictive time frame has been established in Division procedures to prevent loss of remedy or the issue from becoming moot.

Repetitive. This issue has been grieved previously in grievance # \_\_\_\_\_

Inquiry on behalf of other inmates.

Group Complaints or Petitions. Grievances are to be submitted by individuals.

Vulgar/Insolent or Threatening Language. YOU MAY BE CHARGED IN ACCORDANCE WITH THE PROVISIONS IN DIVISION OPERATING PROCEDURE 861 "INMATE DISCIPLINE"

Photocopy/Carbon Copy. You must submit the original grievance for responses and appeals.

Grievances Filed Regarding Another Institution. This grievance is being returned to you for you to submit to:

☒ Informal Procedure. You have not used the informal process to resolve your complaint in accordance with the Implementation Memorandum

Request for services

Insufficient Information. You need to provide the following information to the Grievance Office before the grievance can be processed: \_\_\_\_\_

The issue in the grievance is different from the issue in the informal complaint

Institutional Ombudsman/Grievance Coordinator: *B. Karuzer*

WRSP  
Grievance Department

**If you disagree with this decision, you have 5 calendar days from date of receipt to submit to the Regional Ombudsman for a review of the intake decision. The Regional Ombudsman's decision is final.**

Regional Review of Intake (within 5 working days of receipt)

The intake decision is being upheld in accordance with the criteria in Division Operating Procedure 866 "Inmate Grievance Procedure".

The intake decision is being returned to you because the 5 day time limit for review has been exceeded.

The grievances meet the criteria for intake and are being returned to the Warden/Superintendent for logging.

Regional Ombudsman:

Date:

**WITHDRAWAL OF GRIEVANCE:** I wish to voluntarily withdraw this grievance. I understand that by withdrawing this grievance, there will be no further action on this issue nor will I be able to file any other grievance in the future on this issue.

Inmate Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Staff Witness: \_\_\_\_\_

Date: \_\_\_\_\_

**VIRGINIA DEPARTMENT OF CORRECTIONS  
EMERGENCY GRIEVANCE FORM**

DOP 866  
Attachment 5

Log #

83942

Definition: Emergencies are defined as situations or conditions which may subject the inmate to immediate risk of serious personal injury or irreparable harm.

Neal James 1180278 WBSP A-1 144  
Inmate Last Name First No. Institution/Bldg. # Cell #

**PART A- INMATE CLAIM**

What is the emergency? I WAS REFUSED my medication By the nurse during evening pill call. When pill call was announced i was in the shower. I got out but by the time i got there she was leaving. I asked for my medication and she refused. My medication is considered life sustaining medication. I immediately asked for AN EMERGENCY GRIEVANCE.

2-16-10 James Neal #1180278  
Date / Time Signature of Inmate & Number

**PART B- STAFF RESPONSE**

(This part is to be completed and returned to the inmate within eight (8) hours.)

☒ Your grievance does not meet the definition for an emergency. Reason/s:  
You did not present to office door for pill call in a timely manner. Therefore, you did not receive your pills. This is not life-threatening.

☐ Your grievance has been determined to be an emergency and the following action has been taken:  
WBSP  
Grievance Department  
MAR 12 2010

2-16-10 5<sup>35</sup> pm M. Spearman  
Date / Time Respondent / Title

Distribution: Original Grievance returned to Inmate  
Copy forwarded to Institutional Ombudsman/Grievance Coordinator

[Detach here]

look at the person who signed this grievance.  
officer collins.



VIRGINIA DEPARTMENT OF CORRECTIONS

**Offender Grievance Response - Level II**

866.1 A-7

DOC Location: Central Office,

Administration

Report Generated by Ray, Howard

Report run on 4/2/2010 at 12:01 PM

| Offender Name     | DOC#    | Location                                  | Grievance Number |
|-------------------|---------|---|------------------|
| Neal, James W Jr. | 1180278 | <b>Current</b> Wallens Ridge State Prison | 630-10-REG-00013 |
|                   |         | <b>Filed</b> Wallens Ridge State Prison   |                  |

**LEVEL II: REGIONAL DIRECTOR, HEALTH SERVICES DIRECTOR OR CHIEF OF OPERATIONS FOR OFFENDER MANAGEMENT SERVICES RESPONSE** (To be completed and mailed within 20 calendar days)

Your grievance appeal complaint has been reviewed along with the response from Level I and your complaint that on February 16, 2010, the nurse refused you your life sustaining medication. You said that it was reported that you were socializing and did not report to receive your medication. You said that you were in the shower.

Based on the information provided and upon further investigation, I concur with the Level I response and have determined your grievance **UNFOUNDED**. Per Lt. A. Mullins, it was noted that you were seen in the pod socializing with other offenders and would not get in the pill line to receive your medication. You refuse you medication when you fail to present at the pill call line in a timely manner. This issue is governed by OP 701.1.

If you have any further issues, please resubmit a sick call for further evaluation. There is no violation of policy/procedure regarding this issue. No further action is needed from this level.

Level II is the last level of appeal for this grievance

|  |            |
|--|------------|
|  | 04/02/2010 |
| Regional Director, Health Services Director, or Chief of Operations for Offender Management Services | Date       |

Date 3-21-10

James Blue #1180278

APPEAL to the Level I Response: (Carbon Copied)

Pg 1

- 1) In the informal Complaint that I wrote which is attached to this grievance, LT.A. Mullins states that officer Collins was not working A-Building on the date of 3-16-10. When I submitted the Regular Grievance and attached the Emergency Grievance to it, I told the Grievance Coordinator to look at the Emergency Grievance Receipt where the officer signs. They would see that officer Collins had indeed worked A-Building because he was the one who signed the Emergency Grievance. In the Wardens Response, LT.A. Mullins Response had changed. LT.A. Mullins stated officer Collins was working A-Building. Which is not what was said on the informal Complaint.
- 2) Nurse Roberts arrived in A-1 pod during pod Recreation and pill call was announced. I was in the shower when this was done. There's not that many inmates who take medications in this pod. I had to dry off, put my clothes on. Then I got up and went to my cell. Wait for my cell door to be opened. The Booth Officer closed my cell door because he thought I wanted to come in the cell. I had to get my I.D. and some water. Then I had to push the Emergency button in my cell. Wait for the officer to answer it and tell him I had to get my medication. I was seen by Nurse Roberts coming down the steps. She was closing her medical box and walking out the door. I let her know that I needed my medication. She could have stopped and gave me my medication because she's done it for other inmates before. Nurse Roberts refused to stop



Date 3-29-10

Jame #1180278

(cc)

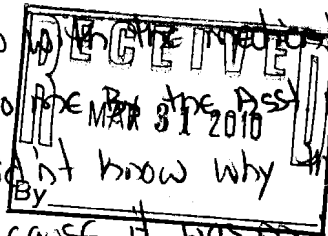
Cont.....

Pg 2

OR SPEAKS TO ME. At that time I told officer Collins that I wanted AN EMERGENCY GRIEVANCE. I WAS SENT TO MY CELL AS IF I HAD DONE SOMETHING WRONG. I WAS DENIED THE EMERGENCY GRIEVANCE BY OFFICER COLLINS AND THE BOOTH OFFICER. I HAD TO GET AN INMATE WHO AN POD WORKER TO GET THE EMERGENCY GRIEVANCE FOR ME, AND TAKE IT TO GET SIGNED. OFFICER COLLINS WASN'T GOING TO SIGN IT, THEN INMATE HAD TO TALK TO HIM TO MAKE HIM SIGN IT.

3.) THERE IS NO SET TIME HERE ON W.B.S.P FOR PILL CALLS. THERE IS NO TIMELY MANNER IN WHICH TO COME TO THE PILL LINE SINCE THERE IS NO SET TIME FOR PILL CALL. THERE'S NO RULE HERE AT W.B.S.P THAT STATES YOU HAVE 1" minute OR 20" minutes TO GET IN LINE AND GET YOUR MEDICATIONS. IF THERE WAS A SET TIME LIMIT THEN THIS RESPONSE COULD HAVE BEEN USED.

4.) LT. K. SCHOBOLM HAS NOTHING TO DO WITH THE MEDICAL DEPARTMENT HERE AT W.B.S.P. HE WAS SENT TO SPEAK TO THE ASST. WARDEN ABOUT THIS MATTER. LT. SCHOBOLM TOLD ME HE DIDN'T KNOW WHY THE ASST. WARDEN HAD HIM INVESTIGATING TO ISSUE BECAUSE IT WAS AN ISSUE FOR MEDICAL. IF ANYTHING IT SHOULD HAVE BEEN TURNED OVER TO THE INSTITUTIONAL INVESTIGATORS OR THE MEDICAL DEPARTMENT'S HIGHER UPS TO BE ANSWERED.



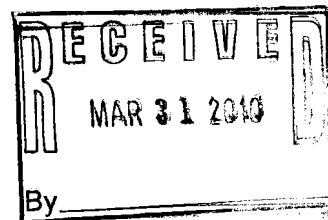
5.) CHRONIC CARE MEDICATIONS ARE CONSIDERED TO BE LIFE SUSTAINING MEDICATIONS. AN (RN) SUCH AS NURSE ROBERTS CANNOT REFUSE TO GIVE YOU, YOUR MEDICATIONS IF YOU ASK FOR THEM. SPECIALLY IF IT'S CHRONIC CARE MEDICATION.

(cc)

Conti...

Pg 3

MS. ROBERTS CAN'T REFUSE TO GIVE ME MY MEDICATIONS THE CONSULT WITH AN DOCTOR AFTER SHE MADE THE DECISION NOT TO GIVE IT TO ME. IT SHOWS THAT NURSE ROBERTS INTENTIONALLY DID NOT GIVE ME MY MEDICATION AND SPOKE WITH THE DOCTOR IF SHE INDEED DID SPEAK WITH HIM RIGHT THEN. THE EMERGENCY GRIEVANCE WAS ANSWERED AT 5:30 PM. THE DOCTOR WOULD HAVE BEEN GONE BY THEN. IN THE RESPONSE ON THE INFORMAL COMPLAINT. NOTHING WAS SAID ABOUT MS ROBERTS SPEAKING WITH THE DOCTOR. IT STATES MS ROBERTS SAID, IT'S NOT LIFE SUSTAINING TO MISS ONE DOSE OF MY MEDICATIONS. AGAIN MS ROBERTS CAN'T MAKE THAT CALL. SHE HAS NO WAY OF KNOWING. BY SAYING SHE SPOKE WITH THE DOCTOR IT SHOWS SHE WAS TRYING TO COVER HERSELF IN CASE SHE HAD DONE SOMETHING WRONG. IT SHOWS MALICE ON THE PART OF MS ROBERTS AND THE MEDICAL DEPARTMENT HERE ON WRSP. CHRONIC CARE PATIENTS TAKE MEDICATIONS THAT KEEP THEM LIVING. WITHOUT THEM THEY MOST LIKELY WOULD DIE. SO AN (RN) LIKE MS ROBERTS CAN'T JUST UP AND NOT GIVE A PERSON THERE MEDICATION. MS ROBERTS IS NOT QUALIFIED TO MAKE THAT DECISION.



Date 3-29-10

Jenna Sue #1180278



**OFFENDER GRIEVANCE RESPONSE  
LEVEL I**

|               |         |          |                  |
|---------------|---------|----------|------------------|
| Neal, James   | 1180278 | WRSP     | 630-10-Reg-00013 |
| Offender Name | Number  | Facility | Log Number       |

**LEVEL I: WARDEN/SUPERINTENDENT'S RESPONSE** (To be completed and mailed within 30 calendar days.)

In your grievance, you said that on February 16, 2010, the nurse refused you your life sustaining medication. You said that it was reported that you were socializing and did not report to receive your medication. You said that you were in the shower.

Lt. A. Mullins responded to informal complaint 630-10610. She stated that on the date indicated Officer Collins was assigned to A-Building. It is noted that you were seen in the pod socializing with other offenders and would not get in the pill line to receive your medication.

Investigation indicated that, per Lt. K. Schlobohm, you refused your medication when you failed to present at the pill call line in a timely manner. Furthermore, a RN may consult with a doctor to determine if a specific medication is life sustaining. It is your responsibility to be cooperative and comply with your plan of care.

OP 701.1 – Health Services Administration governs this issue.

After reviewing the information presented by staff in response to your complaint, and the policy governing the issue, I find your grievance to be **Unfounded.**

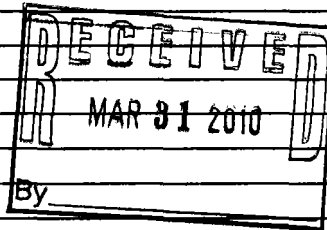
If you are dissatisfied with the Level I response, you may appeal within five (5) calendar days to: The Director of Health Service, P. O. 26963, Richmond, VA 23261-6963.

Bryan Watson  
Bryan Watson, Warden

3/25/10  
Date

I wish to appeal the Level I response because:

SEE ATT.



James W. Allen #1180278  
Offender Signature

3-29-10  
Date

VIRGINIA DEPARTMENT OF CORRECTIONS  
Informal Complaint

Wallens Ridge State Prison

FEB 17 2010

Effective Date: November 1, 2007  
Operating Procedure #866.1 Attachment #9

## Informal Complaint

**INSTRUCTIONS FOR FILING:** Briefly write your issue in the space provided on the Informal Complaint form, preferably in ink. Only one issue per Informal Complaint. Place your complaint in the designated area at your facility. A receipt is issued within 2 working days from the date received if the informal complaint is not returned during intake. If no response is received within 15 calendar days, you may proceed in filing a regular grievance. You may utilize your receipt as evidence of your attempt to resolve your complaint.

James Neal      196547/1180278      A1-144  
Offender Name      Offender Number      Housing Assignment

☒ Unit Manager/Supervisor      ☐ Food Service      ☐ Treatment Program Supervisor  
☐ Personal Property      ☐ Commissary      ☐ Mailroom  
☐ Medical Administrator      ☐ Other (Please Specify): \_\_\_\_\_

Briefly explain the nature of your complaint (be specific):

I had a situation on 2-16-10 during evening pill. ~~where~~ The nurse refused to give me my medication. So I asked Officer Collins and the control room officer for an emergency grievance and was denied this and told to lock down in my cell. My emergency was life threatening because my medication is considered life sustaining medication.

Offender Signature James Neal #1180278      Date 2-16-10  
 Offenders - Do Not Write Below This Line

Date Received: 02-17-10      Tracking # 10610  
 Response Due: 03-04-10      Assigned to: LT. MULLINS

Action Taken/Response:

On the date indicated above Officer Collins was not assigned to A Bldg. It is noted that you were seen in the pod socializing with other offenders and would not get in the pill line to receive your medication. Per Mr. Roberts, med. dep. the medication is not life sustaining to miss one dose.

A. Mullins      A. Mullins      3/24/2010  
Respondent Signature      Printed Name and Title      Date

Original - Offender

First Copy - File

Second Copy - Offender as Intake Receipt